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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,106	11/15/1999	CHARLES S. TAYLOR	GUID-003DIV2	2546
36154	7590	02/23/2004	EXAMINER	
LAW OFFICE OF ALAN W. CANNON 834 SOUTH WOLFE ROAD SUNNYVALE, CA 94086			NASSER, ROBERT L	
		ART UNIT	PAPER NUMBER	
		3736	76	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/440,106

Applicant(s)

TAYLOR, CHARLES S.

Examiner

Robert L. Nasser

Art Unit

3736

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 December 2003.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 12,14,24,32-34,37-40 and 45 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 12,14,24,32-34,37-40 and 45 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 16, 18.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 14, 24, 37-40, and 45 are rejected under 35 U.S.C. 103(a) as being obvious over by Vierra et al in view of Borst et al. Vierra shows a device having first and second shafts 25 (the proximal end of element 17), which are joined by an articulating link 41 and/or 51. The shafts terminated in blocks 15 and 17, which are adapted to contact the surface of the beating heart in an anastomosis procedure or to reposition the heart. There are not suction ports in the bottom. However, Borst teaches the use of suction for two reasons. First, Borst teaches that the use of suction allows for immobilizing the portion of the heart during an anastomosis procedure which improves surgical outcomes. Second, Borst teaches that suction will improve the grip on the heart, enabling easier repositioning. Hence, it would have been obvious to modify Vierra to use suction in place of the friction fit, as it improves the surgical outcomes, as recited. With respect to claims 38-40, Borst teaches attaching the contact members and then manipulating the members to spread them apart while they are in contact with the heart, to immobilize the region of interest.

Claims 32-34 are rejected under 35 U.S.C. 103(a) as being obvious over Vierra et al in view of Slater and Borst et al. Vierra et al shows all of the features of claims 33-35, except that the feet are not interlinked by a pivot, but rather by two pivots, and that

the feet 15 and 17 frictionally engage the heart surface, rather than engage the heart surface by using suction. The examiner notes, that, as discussed above, Vierra has two shafts and two pivots. Slater is selected from a myriad references that show two elements that operate in a scissor-like relationship connected by a single pivot. Hence, it would have been obvious to modify Vierra et al to use a single pivot, as it is merely the substitution of one known equivalent connection for another. However, Borst teaches the use of suction for two reasons. First, Borst teaches that the use of suction allows for immobilizing the portion of the heart during an anastomosis procedure which improves surgical outcomes. Second, Borst teaches that suction will improve the grip on the heart, enabling easier repositioning. Hence, it would have been obvious to modify Vierra to use suction in place of the friction fit, as it improves the surgical outcomes, as recited.

Applicant's arguments filed 12/14/03 have been fully considered but they are not persuasive.

Applicant asserted that modifying Vierra to use the linkage of Slater would be detrimental to the functioning of the device. However, applicant has provided no reasons why it would be detrimental. The examiner recognizes it would be different, but is unclear why it would be detrimental. In addition, the examiner notes that the shafts would not need to be replaced, only that both arms would pivot about the same point.

Applicant has further asserted that one could not modify Vierra with Borst because the force would not be strong enough to block flow in the vessel, as Vierra teaches. However, the examiner notes that Borst teaches that it improves surgical

results by immobilizing the portion of the vessel during such procedures. Hence, it is the examiner's position that the combination is enabled.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
February 23, 2004

Robert L. Nasser
FEB 27 2004
FEB 27 2004